

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

CASE NO. 4:14-CV-00815

Dallas Buyers Club LLC

Plaintiff,

vs.

Does 1-45

Defendant

United States District Court
Southern District of Texas
FILED

JUN 23 2014

David J. Bradley, Clerk of Court

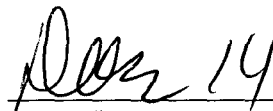
DEFENDANT DOE #14'S MOTION

TO QUASH SUBPOENA

I, Doe #14 defendant, in the above styled cause, hereby files the following Motion to Quash Subpoena issued to Comcast Cable Communications, LLC. As set forth in the Memorandum in Support attached hereto.

Dated this 23 Day of June, 2014

Respectfully Submitted,



Doe #14

MEMORANDUM IN SUPPORT

BACKGROUND

On May 15th, 2014 I received a letter from my ISP (Internet Service Provider) regarding a subpoena for my personal information. After research of other such cases and from accounts of previous defendants, legal groups, and other such practices, these subpoena notifications are followed by demand letters. These letters - which demand thousands of dollars to avoid dealing with their lawsuit - and their phone calls, which are allegedly persistent, are the reason I am filing this motion and for this reason, I respectfully request that I be allowed to do so without revealing my personal identifying information.

To cut court costs while suing as many individuals as possible, Plaintiffs' counsel is using improper joinders in their mass lawsuits alleging copyright infringement through BitTorrent.

These lawsuits include hundreds of defendants scattered across the nation. Dallas Buyers Club, LLC currently has similar lawsuits in the Southern District of Texas and throughout the country. In a BitTorrent case nearly identical to this one CP Productions, Inc. v- Doe 1-300 case 1:2010cv06255, the court notes before dismissal:

If the 300 unnamed defendants have in fact infringed any copyrights (something that this court will assume to be the case, given the Complaint's allegation that so state), each of those infringements was separate and apart from the others. No predicate has been shown for thus combining 300 separate actions on the cheap - If CP had sued the 300 claimed infringers separately for their discrete infringements, the filing fees alone would have aggregated \$105,000 rather than \$350.

STATEMENT OF FACTS

Defendant Doe#14 received a letter from Comcast Cable Communications, LLC. (herein after referred to as "Comcast") indicating that it had received a subpoena to divulge certain information regarding Doe #14. Doe #14 contends that this subpoena is overbroad as it requests information that is unnecessary for plaintiff to effect service.

Doe #14 contends plaintiff has improperly joined 45 individual defendants based on entirely disparate alleged acts- Doe #14 contends that an IP address is not equitable to a person. In Doe #14's case the information provided in plaintiff's "Exhibit B" does not identify Doe #14 as a Comcast customer as it identifies

a different county than Doe #14 lives in. Doe further contends this cause poses an undue burden and breaches due process- Doe #14 can verify appropriate standing to petition this court, proven via Exhibit A which includes a copy of the letter from Comcast (personal info redacted) and a copy of the subpoena. This should provide more than reasonable evidence that the Doe #14 is a subscriber affected by the subpoena. Considering this motion is intended to block the disclosure of privileged personal information, Doe #14 prays for some leeway with regards to Fed. R. Civ. P. 11 particularly those requiring the filer's phone number and email address.

LEGAL ARGUMENT

Internet protocol ("IP") addresses do not, in and of themselves do not qualify as personal information and are not capable of accurately identifying an individual.

In Doe #14's case the "IP" address identified in plaintiffs' exhibit "B", purported to be Doe 14, identifies a user in a county that Doe #14 clearly does not live in. This fact alone calls in to question the accuracy of the plaintiffs' information and the ability of an "IP" address to identify an individual.

In VPR International vs. Does 1-1017 2:2011-cv-02068, Judge

Harold A. Baker writes in an order denying expedited discovery:

Plainly stated the court is concerned that the expedited ex parte discover is a fishing expedition by means of a perversion of the purpose of and intent of Fed. R. Civ. P.23.

from an opinion in his response to an interlocutory appeal (bold added for emphasis):

In this case, not a single one of the plaintiffs 1,017 potential adversaries has been identified. There is no adversarial process yet. Moreover, VPR ignores the fact that IP subscribers are not necessarily copyright infringers. Carolyn Thompson writes in an MSNBC article of a raid by federal agents on a home that was linked to downloaded child pornography. The identity and location of the subscriber were provided by the ISP. The desktop computer, iphones, and ipads of the homeowner and his wife were seized in the raid. **Federal agents returned the equipment after determining that no one at the home had downloaded the illegal material. Agents eventually traced the downloads to a neighbor who had used multiple IP subscribers' Wi-Fi connections** (including a secure connection from the State University of New York). See Carolyn Thompson "Bizarre Pornography Raid Underscores Wi-Fi Privacy Risks (April 25, 2011)

The list of IP addresses attached to VPR'S complaint suggests, in at least some instances, a similar disconnect between IP subscriber and copyright infringer. The ISPS include a number of universities, such as Carnegie Mellon, Columbia, and the University of Minnesota, as well as corporations and utility companies. Where an IP address might actually identify an individual subscriber and address the correlation is still far from perfect, as illustrated in the MSNBC article. The infringer might be the subscriber someone in the subscriber's household, a visitor with her laptop, a neighbor, or someone parked on the street at any given moment. VPR argues that, if served with a subpoena, the ISPS are required by law to notify each targeted subscriber and the Does may then move the

court to quash the subpoenas. The potential filing of a motion to quash is no reason to abandon the adversarial process. As VPR points out, ex parte motions for expedited discover have been granted in similar cases in other districts; among the thousands of Does in those cases, relatively few motions to quash have been filed. In at least one case, counsel has sought leave to amend the complaint to add more Doe defendants. See *lightspeed Media Corp. v. Does I - 100*, Case No. 1:10-cv-05604, d/e 16 (N.D. 111.) (seeking leave to add Does 101 - 1000 as defendants) In *Hard Drive Productions, Inc. v Does 1 - 1000*, counsel sought leave to dismiss more than 100 Doe defendants, stating that some of the Does had reached a mutually satisfactory resolution of their differences with the plaintiff.

Undue Burden

Pursuant to Fed. R. Civ. P. 5(c)(3)(A)(iv) a subpoena shall be quashed or modified if it subjects a person to undue burden. Doe #14 asserts being subject to an undue burden in being a target of this civil action, where there is a substantial likelihood that the plaintiff will be unable to establish that Doe #14 was actually the person responsible for any files transferred at the times alleged, or that Doe copied, distributed, or otherwise infringed on a protected work owned by the plaintiff.

Furthermore, the removal of Doe #14's cloak of anonymity will subject him to intrusive public scorn as alleged unlawful copier of a film.

Basic Fairness and Due Process

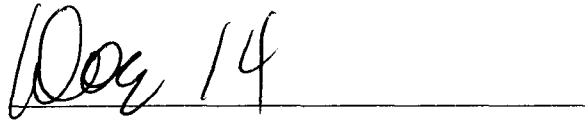
The Comcast Subpoena should also be quashed because it fails to sufficiently verify the validity of the information forming the basis of the request. The accuracy of the data is tenuous and unsubstantiated. Insufficient evidence has been produced for a prima facie demonstration that the investigation techniques of the plaintiff have any degree of accuracy in implicating this Doe in the alleged infringement. As it stands the motion for discovery violates due process by allowing the identified Defendant to be subjected to the Plaintiffs direct discovery and/or interrogatories without being formally served the complaint, the filing of the responsive pleadings by the Defendants, or a Rule 26(f) conference between parties. As stated in earlier statements, plaintiffs' "Exhibit B" in their filing wrongly identifies Doe #14 as being a resident of Chambers County, Texas. Doe #14 is not a resident of Chambers County, Texas thus proving the inaccuracy of the information presented.

WHEREFORE, Defendant John Doe #14 respectfully prays the Court GRANTS Defendant's Motion to Quash Plaintiffs Subpoena to

Comcast Cable Communications, LLC. Finally Defendant respectfully prays the Court grant Defendant such other relief as is just and equitable under the facts and circumstances of this case.

Dated: June 23, 2014

Respectfully,

A handwritten signature in black ink, appearing to read "Doe 14", is written over a solid horizontal line. The signature is cursive and stylized.

Doe #14

Pro Se

CERTIFICATE OF SERVICE

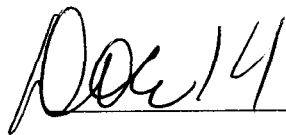
I hereby certify that on 6/23/2014, I served a copy of the
forging document, via US Mail on:

Keith A. Vogt
Takiguchi & Vogt, LLP
1415 W 22nd Street, Tower Floor
Oak Brook, IL 60523

and via Facsimile on Comcast Cable Communications, LLC:

NE &TO
650 Centerton Road
Moorestown, NJ 08057
Telephone: (866) 947 -8572
Facsimile: (866) 947 -5587
Dated: June 23,2014

Dated: June 23, 2014

A handwritten signature in black ink, appearing to read "Doe #14", is written over a horizontal line.

Doe #14

Pro Se

EXHIBIT A



NE&TO
650 Centerton Road
Moorestown, NJ 08057
866-947-8572 Tel
866-947-5587 Fax

May 12, 2014

Personal and Confidential

Via UPS & USPS Delivery

[REDACTED]
[REDACTED]
[REDACTED]

Re: *Dallas Buyers Club, LLC v. Does 1-45*
United States District Court for the Southern District of Texas
Docket No.: 4:14-cv-00815
Order Entered: April 22, 2014
Comcast File #: 553269

Dear Melanie Jackson:

Dallas Buyers Club, LLC has filed a federal lawsuit in the United States District Court for the Southern District of Texas. You have been identified in our records via your assigned Internet Protocol ("IP") address, which is unique to each internet user, in this lawsuit for allegedly infringing Dallas Buyers Club, LLC's copyrights on the Internet by uploading or downloading content without permission. This was allegedly done using a device assigned the IP address 98.201.51.202 on 1/16/14 02:14:31 AM GMT. The court has ordered Comcast to supply your name, address and other information to Dallas Buyers Club, LLC in the attached Order and accompanying Subpoena. The case has been assigned Docket Number 4:14-cv-00815 by the court. If you have any questions about the lawsuit, you should consult an attorney immediately. **Comcast cannot and will not provide any legal advice.**

Comcast will provide your name, address, and other information as directed in the Order and Subpoena unless you or your attorney file a protective motion to quash or vacate the Subpoena in the court where the subpoena was issued **no later than June 6, 2014**. If you make this filing, you must notify Comcast in writing with a copy and proof of filing by sending it via fax to (866) 947-5587 **no later than June 6, 2014**. **Please note that Comcast cannot accept or file any legal action on your behalf.** If you do not file a motion to quash or vacate the Subpoena by this date, or if you fail to notify Comcast of your filing by this date, Comcast will provide your name, address and other information as directed in the Order to the Plaintiff.

If you have legal questions about this matter, please contact an attorney.

Sincerely yours,

Comcast Legal Response Center

Attachments: Copy of Subpoena and accompanying Court Order regarding civil action

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Dallas Buyers Club, LLC

Plaintiff

v.

DOES 1-45

Defendant

Civil Action No. 14-cv-00815

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Subpoena Compliance/Custodian of Records: Comcast Of Texas, Inc. C/O C T Corporation System
350 North St. Paul Street #2900, Dallas, TX 75201

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Per the attached Order, provide the name, current (and permanent) addresses, telephone numbers, e-mail addresses and Media Access Control addresses of all persons whose IP addresses are listed in the attached spreadsheet. We will provide data to you in cost-effective format if you inform us of your preferred format.

Place: Keith A. Vogt/ Takiguchi & Vogt, LLP
1415 W 22nd Street, Tower Floor
Oak Brook, IL 60523

Date and Time:

May 26, 2014 10:00 a.m.

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: April 23, 2014

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

S/KEITH VOGT

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiff
, who issues or requests this subpoena, are:

Keith Vogt/Takiguchi & Vogt/1415 W 22nd Street, Tower Floor/Oak Brook, IL 60523/(630) 974-5707
kvogt@TakiguchiandVogt.com

No	IP	HitDate UTC (mm/dd/yy)	File Hash	ISP	City	County
1	50.175.40.57	1/22/14 01:34:12 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Cypress	Harris
2	50.162.11.217	1/22/14 01:29:38 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Houston	Harris
3	98.200.81.237	1/22/14 09:41:26 AM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Pasadena	Harris
4	98.197.168.169	1/22/14 02:54:54 AM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Galveston	Galveston
5	98.200.97.182	1/21/14 10:20:02 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Houston	Harris
6	98.196.189.22	1/21/14 02:50:21 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Houston	Harris
7	98.201.206.250	1/20/14 02:30:12 AM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Deer Park	Harris
8	98.195.123.27	1/18/14 07:30:45 AM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Katy	Harris
9	98.194.100.30	1/18/14 03:54:32 AM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Pearland	Brazoria
10	98.201.67.124	1/18/14 12:49:40 AM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Houston	Harris
11	98.198.34.216	1/17/14 12:15:52 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Galveston	Galveston
12	76.30.235.71	1/17/14 09:31:36 AM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Houston	Harris
13	98.195.90.158	1/16/14 01:41:45 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Friendswood	Galveston
14	98.201.51.202	1/16/14 02:14:31 AM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Baytown	Chambers
15	98.199.114.188	1/15/14 01:58:34 AM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Sugar Land	Fort Bend
16	50.175.131.188	1/14/14 04:39:29 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Spring	Harris
17	76.31.19.9	1/12/14 11:58:29 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Houston	Harris
18	50.175.81.127	1/12/14 10:51:44 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Lake Jackson	Brazoria
19	98.195.245.117	1/11/14 06:09:18 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Houston	Harris

Exhibit B

20	50.175.131.28	1/11/14 11:35:46 AM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Spring	Harris
21	98.201.90.131	1/10/14 08:05:15 PM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Houston	Harris
22	98.198.71.137	1/9/14 10:47:27 PM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Lake Jackson	Brazoria
23	50.175.18.233	1/8/14 04:28:58 AM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Spring	Harris
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27	50.171.110.49	1/7/14 02:12:07 PM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Houston	Harris
28	98.195.99.95	1/7/14 06:52:28 AM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Friendswood	Galveston
29	98.197.231.37	1/7/14 01:09:24 AM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	League City	Galveston
30	98.200.236.150	1/6/14 11:02:05 PM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Houston	Harris
31	98.194.205.37	1/6/14 08:44:23 AM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Houston	Harris
32	98.194.9.198	1/6/14 07:27:45 AM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Spring	Harris
33	98.196.222.163	1/6/14 01:20:04 AM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Pasadena	Harris
34	76.30.52.98	1/6/14 12:16:01 AM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Houston	Harris
35	98.194.156.230	1/5/14 09:11:17 PM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Houston	Harris
36	50.175.38.153	1/5/14 05:17:17 PM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Houston	Harris
37	98.195.201.21	1/5/14 03:35:46 PM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Spring	Harris
38	98.199.204.236	1/5/14 06:09:34 AM	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Katy	Harris
39	98.195.175.153	1/5/14 02:29:25	SHA1: AE9D9207F77DF66E9687E81C860D13364CD0C085	Comcast Cable	Houston	Harris

		AM				
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41	98.196.68.206	1/4/14 03:37:20 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Richmond	Fort Bend
42	50.171.39.190	1/4/14 03:17:30 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Katy	Harris
43	98.195.163.214	1/4/14 02:04:52 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Missouri City	Fort Bend
44	98.200.86.87	1/4/14 01:43:01 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Deer Park	Harris
45	98.199.247.216	1/4/14 12:06:39 PM	SHA1: AE9D9207F77DF66E96B7E81C860D13364CD0C085	Comcast Cable	Houston	Harris